



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

June 11, 1991

Mr. Kenneth Beasley
Chief Administrative Officer
Two Civic Center Plaza
El Paso, Texas 79901-1196

OR91-268

Dear Mr. Beasley:

You ask whether information relating to an assessment center portion of an examination for the position of City of El Paso police captain is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 11455.

You note that the request for information here was very broad -- including all material developed in connection with the examination -- and that the requestor has not responded to your requests to more narrowly specify which information he is seeking. You have sent us for our review information which you feel is responsive to the request. The determinations we make here apply to the information you submitted.

You say that the assessments are conducted by volunteers who are trained in the assessment center procedures by a private firm pursuant to a contract with the city. The firm has asserted that "all material in question" should be treated as "trade secrets," which are excepted from disclosure by section 3(a)(10) of the act. You have asserted that the information consists of examination materials, citing section 3(a)(1) as the applicable exception. You have also asserted exceptions under sections 3(a)(4) and 3(a)(11).

The information in Attachments A and C and the "In-Basket" materials consists of forms and instructions for specific portions of the assessment examination, examinees' responses, and assessors' comments and rankings. Attorney General Opinions H-242 (1974) and H-483 (1974) ruled, citing section 3(a)(1) as the applicable exception, that the authority of a governmental body to require examinations (a power which the city here has, at least implicitly) includes the power to keep examination materials confidential if disclosure would

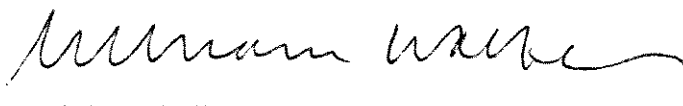
compromise the effectiveness of future examinations. Since those opinions were issued, however, the legislature has adopted a specific provision, section 3(a)(22), for "test items developed by licensing agencies or governmental bodies." We believe you have shown that the information in question is excepted from required disclosure under section 3(a)(22), notwithstanding your failure to expressly raise that provision as the applicable exception. The forms and instructions, the examinees' responses, and the assessors' comments and rankings all reveal or tend to reveal information about test items which, if disclosed, could compromise the effectiveness of future examinations. We thus need not address the sections 3(a)(4), 3(a)(10), and 3(a)(11) claims with respect to those materials.

You also submitted, as Attachment D, the cover page to the firm's publication "Assessment Center Program." We are unable to determine from the cover page whether or to what extent information contained in the publication might be excepted as "trade secrets" under section 3(a)(10), or under any other exception. That the material is copyrighted, as you say it is, would not in itself be determinative of a section 3(a)(10) claim. Please submit the publication for our determination if its disclosure remains at issue.

We note finally that you submitted certain material as Attachment B which you say you intend to release to the requestor. Attachment B consists of general information about the police captain job, and about the assessment program. We agree that neither section 3(a)(10) nor any other exception protects this material from disclosure. You must disclose it.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-268.

Yours very truly,

A handwritten signature in dark ink, appearing to read "William Walker", with a long, sweeping horizontal line extending to the right.

William Walker
Assistant Attorney General
Opinion Committee

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WW/mc

Ref.: ID# 11455

Enclosures: Attorney General Opinions H-242 (1974) and H-483 (1974).

cc: Mr. James Chesshire
10865 Edgemere G1
El Paso, Texas 79935

Mr. Jack Clancy
Jack Clancy and Associates
4951 Richwood Court
Fair Oaks, California 95628